



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1993

Mr. S. Anthony Safi
Mounce & Galatzan
P. O. Drawer 1977
El Paso, Texas 79950-1977

OR93-312

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20500.

The El Paso Independent School District received an open records request for certain records "relating to the transfer of Nancy Archer from Crockett Elementary - Intermediate." You contend the information may be withheld from the public pursuant to sections 3(a)(1), 3(a)(2), 3(a)(3), 3(a)(11), 3(a)(14) and 14(e) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3).

In researching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Clearly, section 3(a)(3) does not prevent disclosure of the letter from Ms. Archer to Mr. Cortes, dated April 18, 1993, as they are both potential parties to any anticipated litigation. If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3). Finally, the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You seek to withhold the requested information under sections 3(a)(1) and 3(a)(2) as an invasion of personal privacy. Section 3(a)(2) excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 3(a)(2) excepts information in personnel files only if it meets the test under section 3(a)(1) for invasion of privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). We therefore analyze the applicability of both sections to the letter from Ms. Archer, which was not specifically excepted from disclosure by section 3(a)(3).

Information may be withheld if:

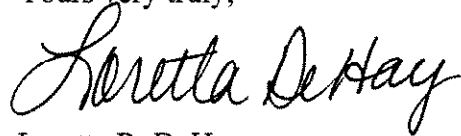
- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Found. of the S. v. Texas Indus. Accident Bd, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information relating to the transfer of a public employee may be highly intimate or embarrassing, the public has a legitimate interest in knowing the reasons why such actions were taken. Open Records Decision No. 444 (1986). Therefore, sections 3(a)(1) and 3(a)(2) do not prevent disclosure of the letter from Ms. Archer. For these reasons, you must release the letter from Ms. Archer to Mr. Cortes; you may withhold the remainder of the requested records.¹

¹Because you have previously released other correspondence between Ms. Archer and representatives of the school district, we need not address the applicability of section 3(a)(11) to the letter from Ms. Archer to Mr. Cortes. See Open Records Decision No. 400 (1983) (previous disclosure of information waives 3(a)(11) claims). In view of our determination that the records are excepted from disclosure by section 3(a)(3), we need not address the applicability of sections 3(a)(14) and 14(e) as the letter from Ms. Archer does not contain personally identifiable information about a student.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta R. DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent and the last name "DeHay" following in a similar style.

Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/lmn/jmn

Ref.: ID# 20500

Enclosures: Submitted documents

cc: Mr. Sito Negro
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)